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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1067~~ 172

THE TEXAS COMPANY,

Petitioner,

v.

UNITED STATES OF AMERICA AS OWNER OF THE USS RUCHAMKIN AND TEN OTHER NAVAL VESSELS OF THE UNITED STATES;

and

EVELYN ECKERT, Administratrix of the Estate of EDWARD JAMES ECKERT, JR., Deceased, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR RESPONDENTS ALLRED, BODE, BRIGHT, ECKERT AND FULWILER IN OPPOSITION

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Opinions Below

The opinion of the United States District Court for the Eastern District of Virginia (Pet. App. 29-41) is reported at 141 F. Supp. 97. The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 42-53) is reported at 241 F. 2d 849.

Jurisdiction

The judgment of the Court of Appeals was entered on January 25, 1957. A timely petition for rehearing was denied by order entered March 11, 1957. The petition for a writ of certiorari was filed on June 7, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether there is *in rem* liability of a vessel for the negligence of officers in command of a naval task group stationed aboard the vessel, but not in command of the vessel.

2. Whether the United States Court of Appeals can reverse a clearly erroneous decision of the District Court when from facts as found by the District Court its conclusions are erroneous.

Statutes and Regulations Involved

The applicable statutes and international rules involved in this proceeding are set forth at pages 54-59 of petitioner's appendix.

Statement

This brief is submitted on behalf of the following respondents: Evelyn Eckert, as Administratrix of the Estate of Edward James Eckert, Jr., Deceased; Parley Bright, as Administrator of the Estate of Morton Bright, Deceased; Catherine Bode, as Administratrix of the Estate of Ralph J. Bode, Deceased; Barbara Allred, as Administratrix of the Estate of Kenneth V. Allred, Deceased; Margaret Fulwiler, as Administratrix of the Estate of John T. Fulwiler, Deceased.

The actions involved herein arose out of a collision that occurred on November 14, 1952, between the Texas Company's SS "WASHINGTON" and the USS "RUCHAMKIN", one of eleven naval vessels engaged in training maneuvers in the vicinity of Cape Henry, Virginia, at approximately 2:15 A. M. The "WASHINGTON" was a tanker of the T-2 type and the "RUCHAMKIN" a destroyer. Prior to the collision, the USS "RUCHAMKIN" was steaming on a westerly course, paralleled to and on the extreme right of a naval formation. The SS "WASHINGTON", south of the formation, was steaming on a northerly course. The SS "WASHINGTON" entered the formation from the left side, crossed in front of all of the heavy ships of the formation and struck the USS "RUCHAMKIN". Neither vessel reduced speed prior to the collision.

The Second Mate of the "WASHINGTON" was on watch prior to and at the time of the collision. He remained in the wheelhouse and did not go out on the wings of the bridge where he could have had an unobstructed view. He admits that he did not pay attention to his radar (Pet. App. 47). Visibility was excellent (Pet. App. 45). Although the Second Mate of the "WASHINGTON" admitted seeing the red side lights of two of the vessels of the naval formation and stated that he altered course without giving the required whistle signals, he denied seeing the other vessels of the formation which were much closer to him. He made this denial although he passed between two of the vessels, only 1,000 yards ahead of one and 1,200 to 1,500 yards ahead of another, known as the "CAPRICORN" (Pet. App. 33, 47). He made a second change in course without signalling as required by the International Rules of the Road. Five to ten minutes prior to the collision, the lookout on the "WASHINGTON" sighted the "RUCHAMKIN" to starboard and signalled the bridge but his signal was ignored by the Second Mate (Pet. App. 48). Incidentally, to the lookout it was apparent that the vessels when first sighted

to the starboard were naval vessels because of their formation and because they were signalling to each other by blinker lights (Pet. App. 45). Even if the "RUCHAMKIN" was not sighted until after the tanker crossed the other vessels, including the "CAPRICORNUS", there was time to avoid the collision if reasonable care had been exercised since several minutes elapsed from the time the "WASHINGTON" crossed the path of the "CAPRICORNUS" until the collision. This time was sufficient to effect an alteration of the course of the "WASHINGTON" (Pet. App. 49).

At a consolidated hearing of cross libels *in rem* and *in personam* filed by the owners of both vessels and suits for damages for wrongful death filed against the Texas Company by the representatives of seven deceased soldiers the District Court found the "RUCHAMKIN" guilty of negligence and exonerated the "WASHINGTON". The actions for wrongful death were dismissed. The government and five of the wrongful death claimants appealed. The Court of Appeals unanimously reversed the District Court and found that the "WASHINGTON" was also at fault. It held the "WASHINGTON" at fault for failure to observe the starboard hand rule both in respect to the naval formation as a whole and as to the vessels within the formation (Pet. App. 44-45). It also held that the "WASHINGTON" failed to maintain a proper lookout (Pet. App. 47-49) and found that the "WASHINGTON" should have sighted the "RUCHAMKIN" in time to avoid the collision (Pet. App. 48-49). The Court of Appeals also decided by a majority of the Court that the vessels of the naval formation on which the officers in command of the naval task group were stationed, which officers were not in command of the vessel, could not be held to *in rem* liability for the negligence of these officers (Pet. App. 50-51).

Argument

Respondents address themselves only to the second question presented. The first question concerns only petitioner and respondent United States of America.

Petitioner contends that the Court of Appeals for the Fourth Circuit did not apply the proper standard to its review of the decision of the District Court. This contention is without foundation. The Court of Appeals at the oral argument stated the standard of its review of the findings of the District Court on the facts. It explicitly stated that it would only reverse the District Court on the facts if the findings were clearly erroneous and further stated that the appeal would not be considered a trial *de novo*. A reading of the Court's opinion (Pet. App. 42-53) shows that any time the Appellate Court made a finding of fact contrary to that of the District Court, it did so because based on other facts as found by the District Court itself, the District Court was clearly erroneous. Thus the Court of Appeals concluded that the District Court was clearly erroneous in absolving the "WASHINGTON" from fault. On the facts found by the District Court, even if the "WASHINGTON" did not discover the "RICHARDS" until it crossed the "CARNEGENUS", the Court of Appeals held that there was sufficient time to avoid the collision in the exercise of reasonable care on the part of the "WASHINGTON" (Pet. App. 49).

The Court of Appeals also found that the District Court was clearly erroneous in finding that the "CARNEGENUS" shut off the view of the "RICHARDS" from the "WASHINGTON" (Pet. App. 48). Here again the Court of Appeals based its finding on the position of the vessels, their size and speed as found by the District Court. Based on its own findings, the District Court is clearly erroneous.

When the Court of Appeals held that the explanation that those on the "WASHINGTON" thought that the naval

vessels were fishing-boats was not convincing, it in effect held that the District Court was erroneous as a matter of law (Pet. App. 45). The Court of Appeals also found the District Court to be clearly erroneous in its rejection of the testimony of Upton, lookout on the "WASHINGTON". It held there was "no reason why it should not be accepted" (Pet. App. 48).

Thus in each instance where the Court of Appeals made a finding contrary to that of the District Court, it did so within the scope of its authority.

The Court of Appeals also found error in matters of law. The District Court failed to apply the proper rules of law. It erroneously failed to apply the starboard hand rule of the International Rules of the Road, 33 U. S. C. Sec. 104, and it also erroneously failed to hold that the "WASHINGTON" was obligated to comply with the rule relating to whistle signals on changing course, International Rules of the Road, 33 U. S. C., Sec. 113.

Petitioner doubts the ability of the Court of Appeals to understand the facts of this case, contending that the facts are so complicated that the Appellate Court cannot determine that the District Court was in error. It alleges that the Appellate Court only considered the Brief (with Appendix) and Reply Brief of each of the parties and the oral argument, whereas the trial court allegedly thoroughly examined the many depositions introduced at the trial. Respondents do not have petitioner's source of information as to the deliberations of the Court of Appeals and therefore cannot assert that the Learned Court did not read the entire record. (The appendices were in themselves very detailed.) Surely the Court of Appeals is as able as the District Court to determine the credibility of witnesses who did not appear before the District Court and whose testimony was furnished by deposition. The Court of Appeals held the District Court in error in dis-

regarding the testimony of the lookout, Upton, which was entirely reasonable and was given shortly after the collision at the Coast Guard Hearing" (Pet. App. 48). The testimony was corroborated by the helmsman.

The Court of Appeals is also able to understand the details of naval maneuvering, Navy regulations and training, and the motives of the naval exercise, all of which are referred to by petitioner at page 22 of its petition. These details are unimportant in determining the negligence of the tanker "WASHINGTON" in steaming into a naval formation or any formation of vessels on crossing courses.

The only possible conclusion based on the facts is that the tanker "WASHINGTON" did not keep a proper lookout. If one had been maintained, the "WASHINGTON" would have discovered the "RICHAMKIN" in ample time (Pet. App. 48).

The Court of Appeals applied the proper standards to its review and there are no reasons for granting the writ of certiorari.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted.

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